

NO. 22301

IN THE SUPREME COURT OF THE STATE OF HAWAII

DOLORES L. NAPOLEON, Claimant-Appellee

vs.

CONDOTECH'S HAWAII RESORT and HAWAII INSURANCE GUARANTY,
Employer/Insurance Carrier-Appellant

and

SPECIAL COMPENSATION FUND, Appellee

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 86-416(M)
(7-91-03241))

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Employer-appellant Condotech's Hawaiiana Resort and Insurance carrier-appellant Hawaii Insurance Guaranty Association (collectively, "Appellants") appeal from the January 8, 1999 decision and order that the Labor Relations and Industrial Relations Appeals Board ("the Board") entered in favor of Claimant-Appellee Dolores Napoleon and Appellee Special Compensation Fund (SCF) and the February 9, 1999 order denying Appellants' motion for reconsideration.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised by the parties,

IT IS HEREBY ORDERED that the orders are hereby affirmed for the following reasons: (1) under Hawai'i Revised

Statutes (HRS) § 386-33 (1985), in order to obtain apportionment with the SCF, an employer must establish that the claimant suffered from a preexisting permanent partial disability, that the disability would have supported a thirty-two week compensation award, and that the preexisting disability combined with the work-related injury resulted in a greater disability; Bumanglag v. Oahu Sugar Co., Ltd., 78 Hawai'i 275, 280, 892 P.2d 468, 473 (1995); (2) there was insufficient evidence that the psychiatric disorders Napoleon was diagnosed with after the work-related injury pre-dated the injury; (3) assuming arguendo that the psychiatric disorders were preexisting permanent disabilities, there was insufficient evidence that the disorders would have warranted a thirty-two week compensation award; and (4) the Board's decision did not impose a pre-injury manifestation requirement.

DATED: Honolulu, Hawai'i, August 30, 2000.

On the briefs:

Clyde Umabayashi and
Muriel M. Taira of
Kessner Duca Umabayashi
Bain and Matsunaga for
Employer/Insurance
Carrier-Appellant

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General, for the Special
Compensation Fund Appellee